

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re)
)
Amendment of the Commission's Rules) WT Docket No. 97-82
Regarding Installment Payment)
Financing for Personal Communications)
Services ("PCS") Licensees)
Installment Payment Restructuring)

To: The Commission

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

Alpine PCS, Inc. ("Alpine"), by counsel and pursuant to FCC Rule Section 1.429 replies to the oppositions filed to its November 24, 1997 petition for reconsideration of the *Second Report and Order and Further Notice of Proposed Rule Making*, FCC 97-342 (October 16, 1997), 62 Fed. Reg. 55375 (October 24, 1997) ("*C Block Order*"), and shows the following:

I. Introduction.

1. This proceeding presents one of the more difficult decisions this agency has ever faced. On the one hand, two multiple holders of C block licenses have failed; and C block licensees have presented compelling arguments that additional of their number, probably a majority, will fail without additional relief from that adopted in the *C Block Order*. If that happens, the bulk of C block licenses will be administered under bankruptcy court supervision, with the likelihood that the Treasury will never receive the amounts bid for those licenses, either because any re-auction of these licenses will never yield the prices initially bid, or because the bankruptcy courts will write down the government's debt on the basis that the government is undersecured

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(i.e., the amount of the debt is more than the value of the licenses securing it).^{1/}

2. On the other hand, there is the at least facially appealing concept that a deal's a deal. Implicit in this concept is the view that (1) restructuring C block installment debt will cause future bidders to expect they too can overbid for spectrum and receive similar debt relief; (2) it is unfair to losing C and cash paying A and B PCS block bidders to restructure the debt of C (and F) block) licensees who are in financial distress; and (3) despite the mantra that the FCC is not to be concerned with the revenue auctions raise,^{2/} that revenue has been a public and Congressional relations bonanza for the agency, and would entail a loss of face to adopt relief which significantly causes its reduction.

3. This is why this proceeding has produced so much paper, and so much political and lobbying pressure. On the one hand, the survival of a large segment of entrepreneurial class licensees, which the Commission helped to develop pursuant to Congressional mandate, is at stake; on the other, it appears a matter of principle is presented, i.e., a deal's a deal.

4. Alpine does not believe revenue maximization is the preferred policy for evaluating C block restructuring issues, although it understands the practical political appeal this

^{1/} In fact, given the Supreme Court's holding in *Fidelity Financial Services, Inc. v. Fink*, __ U.S. __, 1998 WL 7076 (January 13, 1998), it is doubtful the government even holds a security interest in the C block licenses as it failed to perfect its security interests in those licenses in time.

^{2/} See 47 U.S.C. § 309(j).

position presents. Rather, it believes the Commission's more important concern should be with facilitating the best practicable service to the public.^{3/} Alpine is concerned, however, that neither will occur without the *C Block Order's* modification. And Alpine is convinced the Commission can modify the *C Block Order* without doing violence to its auction processes or injustice to losing C block or non-installment paying PCS licensees.

II. The buyout option.

5. Plainly the most difficult restructuring proposal for the Commission to adopt is that for a net present value ("NPV") buyout of a licensee's installment debt. It is this proposal which has engendered the most heated of arguments among the parties.^{4/} Even though the NPV proposal looks like the forgiveness of debt, it is really not the case. Rather, the need for an NPV buyout lies in the fact that no C block licensee -- not even those affiliated with former Bell Operating or major interexchange carriers -- has access to capital at anywhere near the seven percent rate of their government financed installment debt. Thus, a buyout for less than a substantial discount is unlikely to be accepted by any rational licensee. Accordingly, the Commission's offer to allow licensees to buy out their installment debt simply does not offer C block

^{3/} Cf. *Comparative Broadcast Proceedings*, 1 F.C.C.2d 393, 5 Rad. Reg. 2d (P&F) 1901 (1965).

^{4/} Compare the oppositions pleadings of Christensen Engineering & Surveying, CONXUS Communications, Inc., Florida Power Corporation, Polycell Communications, Inc. and Third Kentucky PCS, each favoring the proposal, with AmeriCall International, LLC, Omnipoint Corporation, PrimeCo Personal Communications, L.P., each opposing the concept.

debtors any meaningful relief. Moreover, given the strings attached -- i.e., (i) prepay all BTA licenses held within any MTA, (ii) surrender any licenses not prepaid with cancellation of the debt for such surrendered licenses, and (iii) receive a credit of only 70 percent of the down payments made on those cancelled licenses -- it is difficult to see how any licensee would be helped by choosing this option as it is now constructed.

6. The Commission could make this option more palatable in any number of ways. First, by adopting Sprint's compromise proposal, which would calculate the NPV discount by reference to the value of the government's financing when the lottery was conducted, before C block licensees became distressed, the FCC could offer a discount without having to delve into the subjective issue of each licensee's current cost of capital. Not only would this not result in a substantial decrease in the amounts paid for C block licensees, it would also be a fair compromise of the issue which would likely avoid numerous bankruptcies where the value of the now unsecured government installment debt would be marked to market by the bankruptcy courts.^{5/} Even though it would result in a reduction of principal payment, Sprint's proposal does not raise any issues of unfairness, of choosing winners and losers, or of encouraging disrespect for the auction process. Rather, it fairly

^{5/} See note one, *supra*. In this connection Alpine notes Omnipoint's request that the Commission clarify its "treatment" of licensees in bankruptcy; however, Alpine fails to see how the Commission could possibly declare its position in advance of a bankruptcy proceeding, given the myriad of variables each such proceeding presents. Alpine does agree with Omnipoint that clarification of the procedures of option election and debt forgiveness under such options is in order.

and objectively would discount C block debt based on the value of that debt when the auction occurred, similar to the way that Treasury Bills and other government debt is sold at discount.^{6/}

7. Second, whether the Commission adopts any NPV buyout -- and Alpine certainly believes it should -- the Commission ought to remove the strings attached to the prepayment option. It should do this (1) by allowing the full amount of down payments to be used for making prepayments (minus perhaps the cost of re-auctioning any spectrum returned to the government), and (2) by removing the requirement to prepay all licenses held within any one MTA where any one BTA is prepaid and to prepay all licenses not otherwise returned to the government. Again, contrary to the suggestions of some of the parties who propose that the Commission maintain a more punitive stance, Alpine does not foresee that adopting these modifications will engender a lack of respect for the Commission's future auction processes. This is an extraordinary situation, not likely to be repeated. Moreover, no one has suggested that C block licensees who have requested restructuring in this proceeding acted

^{6/} Under Sprint's proposal, the Commission could hold an expedited proceeding to take evidence of the value of its financing, and make an expert determination of its NPV when the C block auction was held. That determination would be upheld as long as it was based on substantial evidence, was not otherwise arbitrary or capricious, or otherwise not in accordance with law. See 5 U.S.C. § 706(2). In this connection, Alpine notes, however, that the relief this compromise NPV discount approach affords true entrepreneurial concerns, such as it, is limited given that Alpine's cost of capital is significantly higher than that of the faux small business entities which dominated the C block auction. Accordingly, if the Commission adopts the Sprint compromise proposal -- as Alpine suggests it should -- it should do so in combination with the other options discussed below which have more meaning for true entrepreneurial concerns such as Alpine.

in bad faith. And finally, if for no other reason, Alpine doubts after this proceeding that the FCC will ever again offer government financing in connection with an auction.^{1/}

8. Especially given the Supreme Court's holding in *Fidelity Financial*,^{8/} the FCC must face the practical fact that failure to offer an NPV buyout is likely to result in the bankruptcy courts writing down C block licensee's installment debt either as a result of the Commission being undersecured, or as a result of the FCC's failure to perfect its security interests. The agency has a unique opportunity to adopt Sprint's proposed compromise to prevent whole-sale bankruptcies while not doing violence to its auction processes or other bidders. The Commission should take that opportunity.

III. Reducing the interest rate.

9. Just as the issue of whether to adopt a NPV discount in the context of the prepayment option is a difficult decision, reduction of the seven percent interest rate to that prevailing at the start of the C block auction, is an easy decision. As Alpine previously showed, the seven percent interest rate prevailing among C block licensees did not reflect the government's true cost of funds when the C block auction began, nor at any time thereafter. When the C block auction commenced in December of 1995, the yield

^{1/} For much the same reasons, the Commission should eliminate or reduce the "strings" attached to the so-called amnesty and disaggregation options. For example, as Alpine stated before, concerns with respect to maintaining the integrity of the auction process as to those licensees choosing the disaggregation option can better be served by declining to allow disaggregating licensees from bidding on spectrum in the re-auction that they return to the government.

^{8/} See note one, supra.

on the 10 year Treasury Note was 5.56 percent. It later rose to 6.53 percent when Alpine's C block licenses were awarded, and it has now fallen below 5.5 percent. The Commission, however, set the interest rate for most C block installment payments at the coupon rate of the Treasury Note, seven percent, an arbitrary figure having no relation to the government's actual cost of funds.

10. No party opposes reconsideration of the *C Block Order* to reset the interest rate to 5.56 percent, the government's cost of funds when the auction began. Resetting this interest rate presents no issue of fairness, nor of disrespect to the auction process.^{2/} Rather, it comports with the elementary concept of fairness that licensees should be in the position to know their cost of funds when they bid at auction. To choose the coupon rate, which is arbitrarily set by the Treasury, or the yield when the licenses were issued well after bidding closed (even which then would require a reduction in the C block interest rate to 6.53 percent), is unfair to licensees and serves to add unnecessary uncertainty to the auction process. It has no relation whatsoever to the actual cost of funds to the government. That is determined by the discount rate at which parties bid in the Treasury auction for those notes. And it is that discount rate in the primary auction market which forms the basis for the yield obtained by sellers in the Treasury secondary market. Given that no party has advanced any reason to the contrary for adopting this modest

^{2/} And although adoption of this suggestion would not lessen by one dollar the principal payments due the government from the C block auction, it would offer substantial relief to distressed licensees by reducing their interest payments.

correction to the *C Block Order*, the FCC should modify the interest rate to that existing when the C block auction began.^{10/}

IV. Annual payments.

11. Likewise, another easy choice is the adoption of principal and interest payments on an annual basis. This was the proposal originally contained in the March 13, 1997, request filed by Alpine and several other C block licensees, and has not been opposed by any commenting party. As Alpine suggested in its reconsideration petition, adoption of this proposal would have no effect on revenues generated for the government, while offering relief for PCS licensees who are experiencing short term financing difficulties. Therefore, it presents neither an issue of unfairness to other bidders nor any likelihood of engendering disrespect for the Commission's auction processes. The Commission should adopt this proposal.

V. Additional payment moratorium.

12. In its reconsideration petition, Alpine advocated a moratorium on interest payments for up to five years. Alpine explained that adopting an interest payment moratorium will substantially free necessary capital to allow system construction and commencement of operations for the bulk of C block licensees. Having effected system construction and commenced operations, licensees should by then be able to generate sufficient cash flow

^{10/} As an alternative measure, the average yield to the government at the Treasury auction most recently preceding the C block auction would also be a more appropriate vehicle to approximate the government's cost of funds.

to allow at first interest only, and later interest and principal payments.

13. Sprint opposes any further deferral of payment obligations (Opposition at 5 (December 29, 1997)), asserting that:

further delay puts C block licensees at a competitive disadvantage, making attracting investment capital to support build-out difficult; creates a cloud of uncertainty over the wireless sector, and unjustly enriches licensees who defaulted on their payment obligations by affording them financing opportunities not available to those who in good faith fulfilled their payment obligations.

Sprints position is fallacious. The further delay that "puts C block licensees at a competitive disadvantage, making attracting investment capital to support buildout difficult" is delay in resolving this proceeding. A further deferral of installment payments would help finance build-out because funds which would otherwise go to pay installment debt may be used for build-out. Additionally, a further defined deferral period will assist C block entities in attracting investment capital because it will move installment debt payments into the period when systems are enjoying cash flow from operations so that they can pay their installment debts. Finally, no issue of unjust enrichment is presented as no party except those now in bankruptcy have defaulted on their debt. Nor is any unfairness presented. Under a further deferral period, licensees would still be required to repay every penny owed the government, with interest. Thus, once again this option fulfills the "deal's a deal" principle, while helping to avoid a wholesale C block meltdown.

VI. Conclusion.

14. Alpine continues to believe a healthy C block is in the public interest. The Commission can help assure the health of the C block, while still maintaining the principle that a deal's a deal by offering relief consistent with the discussion above. Adoption of Sprint's proposed compromise on the NPV buyout issue, removing the punitive strings attached to the options adopted in the *C Block Order*, reducing the interest rate on C block debt to that prevailing on the 10 year Treasury Note when the auction commenced, adopting annual payments, and adopting an additional defined period of deferral of installment payments so that licensees can get their systems built and generating cash flow will all help save the C block as an entrepreneurial alternative while ensuring that the government receives the benefit of its auction bargain. Alpine, therefore, urges the Commission to promptly reconsider its *C Block Order* in accordance with these proposals.

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CERTIFICATE OF SERVICE

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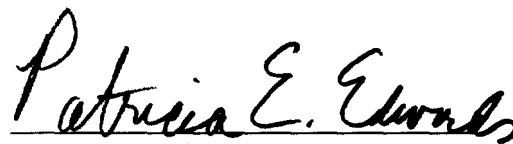
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